



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/381,385 02/01/00 ASHMAN

P BWT1USA

EXAMINER

IM51/0228

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PATTERSON, M

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

02/28/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/381,385

Applicant(s)

ASHMAN ET AL.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 September 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,6,7,12 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,7,12 and 15-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☒ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 2, 6, 12, 15 – 18, 20, 23, 24, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The words ‘absorbability’, ‘flexible’, ‘impermeable’ and ‘substantially’ (Claims 1 and 6) are not clearly defined.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5 – 7, 12, 16 – 17 and 20 – 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sacks et al. (U.S. Patent No. 4,528,235). Sacks et al. disclose a multilayer sheet suitable for packaging oxygen – sensitive materials (column 2, lines 17 – 33; column 3, lines 13 – 15). The sheet comprises three layers of high density polyethylene comprising 10 – 50% of a talc filler having a platelet shape (column 3, lines 27 – 48; column 5, lines 15 – 25; column 6, lines 55 – 63). Each layer constitutes a *barrier layer* which is *non – polar* (column 6, lines 4 – 27). The intermediate layer constitutes a *tie layer* between the other two layers. The intended use of the claimed invention, as a barrier layer which is added to the interior of an already – existing container, has been given little patentable weight.

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks et al. in view of Newman et al. (European Patent No. 0275102). The invention of Sacks et al. is discussed above. Sacks et al. fail to disclose a container which is fabricated from the multilayer sheet. Newman et al. teach that it is known in the art to fabricate a container from a multilayer polyolefinic sheet in order to prepare foods for heating in microwave ovens (column 1, lines 15 – 63; column 2, lines 1 – 52). It would therefore have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to fabricate a container from the multilayer polyolefinic sheet disclosed by Sacks et al. for the purpose of preparing foods for heating in microwave ovens.

7. Claims 15, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sacks et al. The invention of Sacks et al. is discussed above. Sacks et al. fail to disclose a thickness for the high density polyethylene layers of about 50 microns, an aspect ratio for the talc filler of from 16 to 30 and a CIE whiteness of at least 40. The thickness of the individual layers and the aspect ratio and purity of the filler (which determines its CIE whiteness) would be readily determined through routine experimentation by one having ordinary skill in the art, depending on the desired end result. *In re Rose*, 105 USPQ 237 CCPA 1955.

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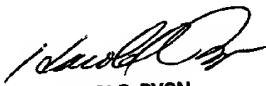
Normally, it is to be expected that a change in size, amount or thickness would be an unpatenable modification. Under some circumstances, however, changes such as these may impart patentability to an apparatus if the particular size claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-2364. FAX communications should be sent to (703) 305-3599. FAXs received after 4 P.M. will not be processed until the following business day.

M.A.P.

n, a, p.

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

2/26/01